Mr. Bourne: You have personally examined——

Mr. Patterson: The printed reports. There was no report for one year, but the other years I looked at the printed reports but find no reference in there relative to the Florida East Coast Railway.

Mr. Bourne: The other orders were not printed?

Mr. Patterson: I don't know. I understand one year there were no formal reports made. Some were made by Mrs. du Pont and some by Mr. Ball, and no reference is in Mrs. du Pont's or Mr. Ball's reports to the stockholders' meeting, except this that I gave you.

Mr. Bourne: Except at the stockholders' meeting?

Mr. Patterson: I mean, to the stockholders.

Mr. Bourne: You have personally examined the reports of the St. Joe Paper Company to the stockholders and you state there are no references therein to the Florida East Coast Railway reorganization?

Mr. Patterson: That is correct. I went through the minute book some months ago and picked those out. Those are the only ones with the exception of the ones I have given you.

Mr. Bourne: Relating to the Florida East Coast Railway?

Mr. Patterson: Relative to the $1,700,000 transaction.

Mr. Bourne: I have no record of those you gave me.

Mr. Patterson: Mr. Russell will bear me out on that. We gave you those after lunch. Mr. Main came in and we gave them to you, and at the same time you will find, subsequently, in there, where we didn't have the other one.

Mr. Bourne: There were some things relative to the sale of $1,700,000 of bonds?

Mr. Patterson: We furnished that.

Mr. Bourne: I further asked you for the other minutes.

Mr. Patterson: There are no other minutes.

Mr. Bourne: Of the executive committee of the St. Joe Paper Company, relative to the Florida East Coast Railway?

Mr. Patterson: There are no minutes of the executive committee.

Mr. Bourne: You state that the executive committee or board minutes show no action subsequent to November 27, 1944, except with respect to the sale of $1,700,000 of bonds?

Mr. Patterson: So far as I have stated.

Mr. Bourne: You have personally examined them?

Mr. Patterson: Yes. These are the only documents that answer any description of any request that you have made, that you have not already been furnished with, aside from those that I have not furnished you.

Mr. Bourne: Can I be excused for a short time, your Honor?

The Court: Yes.

Mr. Bourne: Now, that is all I have.

The Court: Does anybody else have anything?

Mr. Russell: Yes, your Honor, we wish to call one witness. Call Mr. Main.

Mr. Roger L. Main, having been produced and first duly sworn as a witness on behalf of St. Joe Paper Company, testified as follows:

Direct examination by Mr. Russell:

Q. Will you state your name and address for the record? A. Roger L. Main, 1514 Barnett Building, Jacksonville, Florida, residence, San Jose Boulevard, Jacksonville, Florida.

Q. What connection, if any, do you have with the St. Joe Paper Company, the intervener in this proceeding? A. I am a director and member of the executive committee and the treasurer of St. Joe Paper Company.

Q. Approximately what amount, face value, First and Refunding Bonds of the Florida East Coast Railway

Company are owned by St. Joe Paper Company? A. $23,259,000.00.

Q. That is slightly over fifty per cent of all of the authorized issue, is that correct? A. That is correct.

Mr. Russell: Now, your Honor, the purpose of the next question is to——

The Court: Twenty-two or twenty-three?

A. $23,259,000.00.

Mr. Russell: The purpose of these questions is to direct your attention, the attention of the witness to such testimony that was offered with reference to the alleged value of the common stock of the reorganized Florida East Coast Railway Company, and its acceptability as an investment or purchase.

By Mr. Russell:

Q. Mr. Main, I want to ask this question: If that plan of reorganization was promulgated, the terms of which, assuming the valuation fixed for reorganization purposes as permissive capitalization, was forty and one half million dollars, and there would be given to each First and Refunding bondholder in the ratable proportion that his ownership of bonds bore to that amount of common stock, that is to say, for every one thousand dollar bond, assuming that this common stock was of a par value of one hundred dollars, each bondholder would receive nine shares of common stock, with the added proviso that in the event any First and Refunding bondholder objected to accepting, either in whole or in part, such common stock, that such First and Refunding bondholder should receive, if he wished, as bonds, a bond in the amount of nine hundred dollars, carrying a four per cent interest rate, and fully secured as to both principal and interest by a mortgage over all of the property of the Florida East Coast Railway, or, if the bondholder wished to take one-half stock and one-half bonds, would the St. Joe Paper Company

accept, for its bonds, all common stock under such a reorganization plan? A. The St. Joe Paper Company would accept all common stock for its bondholdings under such a plan.

Mr. Russell: That is all.

Cross examination by Mr. Bourne:

Q. Mr. Main, has the action that you say the St. Joe Paper Company would take, been authorized by the board of directors of the St. Joe Paper Company? A. The St. Joe Paper Company, in executive committee meeting this morning,—no, pardon me. After the recess, passed on this proposal and unanimously adopted it. At that meeting, there were three directors present who were not members of the executive committee, and who also approved this plan. That would have made a majority of the board of directors. The board of directors has not had an opportunity to take formal action.

Q. Has the action of the executive committee been reduced to writing in minutes? A. It is being reduced to writing now and can be made available.

Q. Was a proposal made by Senator Byrnes at the argument in January, 1948? Were you present at that argument? A. I was not present, but I am familiar with the proposal.

Q. Was that authorized by the Board of Directors of St. Joe Paper Company? A. I don't believe there was any formal action of the board of directors taken on that proposal.

Q. Was any taken by the executive committee? A. I don't recall. I recall it was informally discussed in Washington by several directors and the trustees.

Q. Did you hear Mr. Patterson's statement that there were no minutes of the executive committee or the board since November 27, 1944, containing any reference to the Florida East Coast Railway reorganization? A. I heard

Mr. Patterson's statement, and I am sure Mr. Patterson knew nothing of this meeting this afternoon.

Q. Well, are you secretary of St. Joe Paper Company? A. No, sir, I am not. I am secretary of the executive committee and treasurer of St. Joe Paper Company.

Q. And is it your recollection that the executive committee's minutes contain no reference to the Florida East Coast Railway Company since November 27, 1944? A. That is my recollection with the exception of the sale of some bonds.

Q. And it is your recollection, as a director, that the minutes of the Board contain no references to the Florida East Coast Railway Company. A. I think you have before you all the references in the trustees' meetings.

Mr. Patterson: Mr. Bourne, I do not say that it is not in there. I furnished you a copy of it.

Mr. Bourne: I am excepting the sale of $1,700,000 of bonds. I distinguish between that bond transaction and the reorganization proceedings.

The Witness: And the what?

By Mr. Bourne:

Q. I am distinguishing between that bond transaction and references to the reorganization proceedings. A. Let us get your question straight now, Mr. Bourne?

Q. Have you any recollection of any references in the minutes of the executive committee or the board, subsequent to November 27, 1944, relating to the Florida East Coast reorganization proceedings— A. I think there was one——

Q. You asked me for the question. Let me finish. A. Pardon me.

Q. Have you any recollection of any references in the minutes of the executive committee or the board, subsequent to November 27, 1944, relative to the Florida East Coast Railway reorganization proceedings, other than the action authorizing the sale of $1,740,000 of bonds? A. No,

those are all that I know of. I am confident there were no others.

Mr. Bourne: That is all.

Mr. Russell: That is all. Come down.

Mr. Brown: Just a minute, your Honor.

Cross examination by Mr. Brown:

Q. Mr. Witness, has the St. Joe Paper Company taken any action of which you know, with respect to the way in which it would vote for acceptance or rejection of the Interstate Commerce Commission plan that is now or that has now been certified to this Court? A. The St. Joe Paper Company has taken no action on that plan.

Q. Can you, or are you willing to state what action the St. Joe Paper Company will take if and when this plan is submitted for acceptance or rejection? A. I can tell you how I will vote. I can not tell you——

Q. Will you do that? A. I can not commit my fellow directors.

Q. Will you state that? A. I will oppose the plan and vote in opposition to this plan.

Mr. Brown: That is all.

Re-direct examination by Mr. Russell:

Q. Mr. Main, irrespective of what may appear, formally, in the minutes of the meetings of the executive committee of St. Joe Paper Company, have the members of that Committee kept themselves informed of the developments in connection with the Florida East Coast Railway reorganization? A. There is such a small group of us that we are practically in general or daily communication, and we are constantly informed of all the procedures.

Mr. Russell: That is all.

The Court: Is there anybody else now?

. . . To which inquiry there was no response.

The Court: I have one thing I ought to call attention to that I asked the other day, as to the charter of this Company, and I was told that it was in the record. I have not seen it. I was furnished, by the trustees, a copy, and perhaps I should tell you what is in it, and of what importance it is.

The charter consists of letters patent, issued by the Governor and Secretary of State of the State of Florida, to certain named persons, to the Florida Coast and Gulf Railway Company, as it then was, but, the name has been changed by amendment, to the present name, with some other changes, and a 325 mile long road was the main thing first authorized from Jacksonville on down. And, it names the counties. And, therefore, the State of Florida hereby grants unto the above named persons, their successors and assigns, full authority by and under the name, "Florida and Gulf Coast Railway Company", to exercise their powers and privileges of a corporation for the purpose of above stated, and in accordance with the said articles of incorporation and the laws of this state. I was a little struck by the fact of "assigns", named in the grant of the franchise, because I had had some doubts of "assigns", where it was not in there, but it is in there.

I asked Mr. Frink if he would find out if there was anything in the laws of Florida that would prevent merger, or, embarrass it in any way, and he said not. At the time this charter was granted, here, I understood from him, that it was still the law, and there was this item of legislation with respect to such things, and the section is headed —this is in the revised general statutes of Florida, 1892, when this charter was granted.

"2248: CONSOLIDATION, LEASE AND PURCHASE.—Any railroad or canal company in this state shall have the power,

and authority is hereby granted, to make and enter into contracts with any railroad or canal company which has constructed or shall hereafter construct any railroad or canal within this state or in another state, and will enable said companies to run their roads in connection with each other and to merge their stock, or to consolidate with any company within or without this state, or to lease and purchase the stock and property of any other company, and hold, use and occupy the same in such manner as they shall deem most beneficial to their interests. It shall be lawful for such companies to build, construct, and run as part of their corporate property, such number of steamboats or vessels, as they may deem necessary to facilitate the business operation of such company or companies. Parallel or competing lines of railroad may not consolidate their several franchises, lines of railroad, or the management thereof, without special permission from the State Railroad Commission, and also consolidations or attempted consolidations, without permission as aforesaid, shall be ultra vires."

I do not know what that may have to do with it, but I asked for it, and received it, and you have it.

Mr. Bourne: May I get the number of that section, your Honor?

The Court: This is not the present one. It is the revised statutes of 1892, Section 2248. I don't know where it would appear in the new revision. They have a very elaborate one now.

Mr. Bourne: There has been some discussion of it in the——

The Court: My attention was called to the steamboat companies and stocks, here, in the argument.

Mr. Patterson: What is the section?

The Court: Section 2248.

Mr. Patterson: Section 360.10 relates to consolidation and merger of railroads.

The Court: It is another revision. There have been several of them.

Mr. Bourne: Your Honor, not just those under Section 77, but Section 5 of the Interstate Commerce Commission affects the state laws.

The Court: It may be. The Federal Government grabs everything and the Supreme Court says it is all right. I do not know whether these roads would be called competitive or not.

Mr. Bourne: The Commission found not.

The Court: I had particularly in mind this steamboat ownership that was part of the railroad franchises in Florida. You remember, we had two companies, the P & O and the East Coast. It struck me it was under this one that they were undertaking to run steamboats. It has been brought down, unchanged, has it?

Mr. Frink: Changed and revised, but not enough to affect what you have in mind.

Mr. Howell: What is the F. S. A. Annotation?

Mr. Patterson: 360.10.

Mr. Bourne: If I might have a few minutes, your Honor?

The Court: I understand nobody has any further evidence. Do you want to go ahead with the arguments?

Mr. Byrnes: May it please your Honor, would your Honor indicate whether or not you desire to place any limitation upon argument, so that——

The Court: No, sir, I do not desire to do it unless it becomes necessary. I can stay here until Saturday evening. It looks like that should be time enough to talk everybody out.

Mr. Byrnes: I hope so. I was going to ask your Honor whether or not you wished to go on this afternoon, or if it would be possible to meet at nine thirty in the morning?

The Court: I will trade that way with you, if it suits everybody else.

Mr. Byrnes: I will be glad.

The Court: Does everybody agree to that?

Mr. Bourne: Yes. I wonder if we can have some information on what your Honor's desires are about briefs?

The Court: No, if I know anything about this, I would decide it from the bench. I have always done that as a Circuit Judge. However, I can not decide this from the bench. I would not want briefs covering what has been said.

Mr. Milam: Judge Strum, in setting this matter, said he wanted briefs at the conclusion of the hearing, and we have ours prepared accordingly.

Mr. Bourne: Mine is nothing like in completed form, and I would have to do——

The Court: Do not burden me with too many briefs. I am very impatient in reading anything that I have already heard. If there is anything that the argument leaves in the air, that I do not know about, and you can not tell me about, I will certainly welcome any light that could be shown on a situation like that. When it comes to figuring out what all these figures are, I am not a very good accountant. Figures begin to bewilder me. I do not know if briefs would help me or not. My inclination would be to follow the Commission, unless I see something definitely wrong in the situation. That would be my inclination. Of course, I am not committing myself on it, but I am telling you honestly where I stand. I do not understand railroad accounting very much. It looks artificial to me, but I think, in the long run, it works out all right, or it would not be there. I think the expert accountants, by making alterations, can make it good either way.

We will recess now until nine thirty tomorrow morning.

. . . And thereupon Court adjourned to be reconvened at 9:30 o'clock a. m., Thursday, January 13, 1949.

. . . And at 9:30 o'clock in the forenoon, Thursday, January 13, 1949, Court reconvened pursuant to adjournment of the preceding day, and the following further proceedings were had:

Mr. Russell: May it please the Court, in connection with the examination of Mr. Main, counsel for the Coast Line inquired about resolutions of the executive committee. We have secured a copy of that now, and I tender it. I offer it in evidence.

. . . The instrument last above referred to was received and filed in evidence and marked Objector St. Joe Paper Company's Exhibit No. 7.

Mr. Byrnes: Is it the wish of the Court that we proceed with the argument?

The Court: Yes, sir. I might say this. A meeting of the Jacksonville Bar Association will be held at noontime and Judge DeVane and I expect to be there. I thought we would suspend argument at a quarter to one and come back at two. It is just a slight difference in time, but you might bear that in mind, as you go along with your argument.

Mr. Bourne: I wonder whether your Honor wouldn't care to make some division of time, at least between the objectors and the supporters of the plan. I do not know how many counsel there are, or who will argue for the opposition, or how much time they will take.

The Court: You may talk as much as you want to.

Mr. Bourne: It would appear to me that it would be fair to allot the supporters of the plan as much time as the Objectors?

The Court: I think that is a reasonable suggestion.

Mr. Bourne: Can I go on the assumption that the Objectors would be through by the middle of tomorrow?

The Court: Oh, I think so. One side should have as long as the other.

Mr. Byrnes: If your Honor please——.

The Court: Just a minute. You are one of the Objectors?

Mr. Byrnes: Yes, sir, St. Joe Paper Company.

The Court: I think you can agree between yourselves who will speak and how long you will speak. Can you agree to that?

Mr. Byrnes: Yes. I would like to say this. While there are a number of Objectors here, we could not control the desire of counsel for Mr. Claughton or for any of the other bondholders.

The Court: Of course, you could not control it, but somebody has got to modify it.

Mr. Byrnes: I want to say, in an effort to save time, we did try to reach some agreement when the Court adjourned yesterday afternoon and we discussed it in the hall and agreed, at least, upon the order in which we would ask to speak.

The Court: What is that order?

Mr. Byrnes: The order is, the bondholders of the Railway Company, and then the representative of the Railway Executive Board.

The Court: According to this memo, a total of nine hours is suggested? Nine and one-half hours?

Mr. Byrnes: Yes, sir. It was generally understood by those who discussed the matter, that we would try to accommodate ourselves to such time as would be possible, but at that meeting they could not see how long it would be.

The Court: All right.

* * * * * *

(Here followed argument on the objections to the Plan.)

* * * * * *

The Court: Does some other counsel wish to say something?

Mr. Bourne: I would like to say something further, your Honor. You said if anything were to be considered a part of the record, the documents should be designated, and I ask if it is sufficient if I designate them by number. The printed Court record?

The Court: Is this for the reporter's convenience, or are you going to file them with the Clerk?

Mr. Bourne: Your Honor said, for consideration of what is in the record before your Honor, if we might wish to have any part of the Court record incorporated, that I name those. Is it sufficient if I do it by document number?

The Court: I think so. If it can be identified so everybody can find it.

Mr. Bourne: Shall I read or give it to Mr. Halter?

The Court: Dictate it.

Mr. Bourne: They are Numbers 1, 2, 3, 69, 144, 336, 506, 507, 588, 595, 619, 633, 655, 656, 662, 663, 674, 693, 697, 699, 700, 701, 702, 703, 704, 705 and 715.

These include the lien orders that have been referred to. The first mortgage and so forth.

The Court: In this receivership case?

Mr. Bourne: In the reorganization case, yes, sir.

The Court: Is there anything in there that I ought to know particularly?

Mr. Bourne: No, I don't think so, particularly. Most of these things have been referred to by one counsel or another.

The Court: If there is anything I should decide on, I want to be apprised of it.

Mr. Bourne: I don't think so. I did mean to include, Mr. Halter, the transcript of the hearing on October 1, 1948, which was filed on October 7, 1948, and that is the hearing in which Judge Strum said that he would reserve jurisdiction to decide at the consummation of the plan, how much was payable under the lien orders, and the lien orders are included here, and that ties in with what the Commission did in the report of March 25, 1948.

The Court: There is where I got my lien idea from. From those orders. The lien about these bonds.

Mr. Bourne: There was a lien about bonds and liens about additions and betterments. That is all now submitted to the Court for consideration.

The Court: There is nothing for me to decide about that now?

Mr. Bourne: I don't think so.

. . . . . .

(Here followed further argument on the objections to the Plan.)

The Court: Gentlemen, I thank you all for your courtesy, patience and assistance, and I hope that we will all do well in our respective judicial efforts.

. . . There being no proceedings before the Court, the hearing adjourned.

. . . . . .

CERTIFICATE.

I, V. F. Halter, Official Court Reporter, United States District Court, Southern District of Florida, Jacksonville Division, do hereby certify that I reported, in my official capacity, the within named proceedings and that the foregoing pages numbered 1 to 1049, inclusive, constitute a true and correct transcript of said shorthand notes.

Dated at Jacksonville, Florida, this 12th day of March, 1949.

V. F. HALTER,
Official Court Reporter.

Opinion of Samuel H. Sibley, United States Judge Designate.

(Filed Jan. 24, 1949)

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

IN PROCEEDINGS FOR THE REORG[illegible]TION OF A RAILROAD.

IN THE MATTER of FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

SIBLEY, Judge Designate:

After hearing much evidence and argument I have to decide whether a plan of reorganization of the Florida East Coast Railway Company under Section 77 of the Bankruptcy Act certified to this court by the Interstate Commerce Commission as fair and equitable, compatible with the public interest and meeting the requirements of Section 77(b) and (e), should be approved by the court. There is on practically all the debtor Company's property a general mortg[illegible]ge securing a principal of $12,000,000 of bonds dated in 1909 which is not in default and not due till 1959. There is a second general mortgage dated in 1924 securing issues of refunding bonds of a principal of $45,000,000, on which an additional amount of about $35,000,000 of defaulted interest is due. There are large unsecured debts having no priority, and the Company is and has long been insolvent. A receivership in this court was secured on a creditor's bill in 1931; and the following year the trustees in the refund-

ing mortgage moved to foreclose it in this court and secured a receivership, which was consolidated with the other. The receivers operated the railroad successfully and profitably, keeping the interest on the first mortgage of $540,000 per annum paid up and accumulating a large amount of surplus cash. In 1941 a committee representing the holders of about $30,000,000 of the refunding bonds in their behalf filed this reorganization proceeding. The Interstate Commerce Commission in due course in 1942 certified to the court a simple plan of reorganization which would have continued to carry a first mortgage and to vest the new common stock prorate in the refunding bondholders, but it restricted the capitalization to $37,500,000. In 1943 the court disapproved the plan because the Commission had taken insufficient account of the large earnings and profits during these war years sufficient to pay off the first mortgage and leave a large surplus. In 1945 another plan was certified by which the first mortgage would be paid off out of the cash on hand, and new common stock and income bonds would be divided among the refunding bondholders. $8,700,000 more of the cash on hand was to be set apart for rehabilitation and improvement of the railroad. The reorganization and capitalization value was raised to $40,500,000. St. Joe Paper Company had by this time bought fifty-one percent of the refunding bonds, and to safeguard minority holders against any abuse of the majority control a voting trust was provided in the plan. There was a suggestion by what is known as the Lynch interest, owning some $3,000,000 of the refunding bonds, that a controlling interest be acquired by the Atlantic Coast Line Railroad Company by awarding it common stock to be paid for by new bonds of the latter, but it was repelled by the Commission because of aggressive opposition by other refunding bondholders and their threat to vote to reject the plan, and because the Coast Line's fixed charges could not in view of recent operating deficits be prudently

increased. This plan, without the Coast Line control, was declared compatible with the public interest and certified for approval Jan. 8, 1945. Before the certificate became final, the Coast Line bought a large unsecured debt for a small sum and an agreement to divide any collections with the seller, and was allowed to intervene as a party in interest and present a new plan whereby in lieu of the Coast Line's acquiring a majority of voting stock to secure control, the debtor's properties should be merged into the Coast Line and the debtor's creditors should be paid cash and Coast Line securities in satisfaction of their claims. The whole matter was reopened and referred to an examiner and evidence taken especially touching the propriety of control by St. Joe Paper Company or the Coast Line. After a very lengthy discussion the Commission concluded in general terms that there would be betterment of service and economies of operation and increased financial stability by the merger with the Coast Line, and more experience and less distraction by other interests, than if St. Joe Paper Company controlled; and that a plan of reorganization putting the Paper Company in control would not be compatible with the public interest but one putting control in the Coast Line would be compatible therewith. With modifications, the Coast Line plan was certified, by a majority of one Commissioner, on April 8, 1947. 267 I. C. C., 295-391. It was again taken under consideration however, especially on the question whether there was power under Section 77 and the Interstate Commerce Act to propose such a plan of involuntary merger, two additional Commissioners participating. The certification was adhered to by six Commissioners, the other five strongly dissenting both in law and fact. 267 I. C. C., 729-759.

Being thus of opinion that it was not compatible with the public interest for St. Joe Paper Company to own a controlling voting stock interest in the debtor's railroad a majority of the Commission, by way of defeating that

control, adopted this present plan of merger which would result in St. Joe having only a relatively small amount of voting stock in the merged set-up. The plan as formulated pays off the first mortgage and distributes among the holders of the East Coast refunding bonds pro rata any "free cash" on hand at the plan's consummation, meaning thereby the accumulated earnings not needed by the railroad and not included in the valuation of the railroad property at $40,500,000; and then the debtor's entire remaining property is to be transferred to the Coast Line; and as the equitable equivalent of the bondholders' rights in the property for each $1,000 refunding bond $91.67 of cash is to be paid by the Coast Line, plus $300 par of its new mortgage bonds secured by the transferred property, and its divisional income bonds of a par of $175, and $200 in four-dollar-dividend preferred stock having voting power and participating with the common stock in dividends in excess of the fixed dividend, and one and one-third shares of no par Coast Line common stock put at $133.33. All these at par add up to $900 per bond. The prorata share of the bond in the railroad property to be transferred at the value of $40,500,000 as fixed by the Commission both for reorganization purposes and as an upset price in case of sale is $900. But the Commission finds that common stock of the Coast Line was then selling at 55, and had recently been as low as 45. The evidence heard by me both from the advocates and opponents of the plan is that none of these securities when issued will likely be worth par. The gist of the matter is that, because the majority of the Commissioners think it not compatible with the public interest for St. Joe Paper Company to own a controlling amount of voting stock in the reorganized East Coast railroad if reorganized in the simple and natural manner several times certified by the Commission unanimously by giving all the refunding bondholders a prorata share of its common stock, all of them must sur-

render the investment they have chosen and lawfully own in the East Coast property and must take in return an investment which most of them do not desire to own and do not think is an equivalent.

In the hearing before me, as in those before the Commission, the Coast Line urgently insists on the approval of the plan. It proposed it and as the Commission itself reports eagerly desires it. The Committee of New York bankers, which represented when it instituted this reorganization proceeding over $30,000,000 of the refunding bonds but now represents only $572,400, appears in support of the plan. These bankers, according to the testimony of their spokesman, sold the bonds originally, and after their default have been trying without compensation to assist their customers who bought them. They take a banker's view, that the important matter is whether the securities to be issued under the plan will probably be worth on the market more than those issued in an independent reorganization of East Coast alone. Though they do not think any of them will be worth par, they think the Coast Line securities will be worth more. They and their clients are not interested in being stockholders or helping to run the railroad, but are seeking only to sell out as soon as possible and to the best advantage.

No one else supports the merger plan, but numerous objectors and intervenors strongly oppose it. The Southern Railway Company and the Seaboard Airline Railroad Company, which the Commission finds are competitors with the Coast Line for the traffic of the East Coast railroad at its northern terminus at Jacksonville, will be injured by giving over the East Coast to the Coast Line. The bargaining representatives of the East Coast employees contend that the employees will be injured in losing their jobs and in their seniority rights. These other railroads and their traffic and these employees are a part of the affected public whose

interest must be considered by the Commission, but they have no creditor's rights or property interests and they have been considered by the Commission in determining the question of public interest. For reasons stated below, I do not think they present any special matter for the court. Their argument indeed is addressed mainly to invalidity of the plan on other grounds.

St. Joe Paper Company, holding by valid title a majority of the refunding bonds $23,260,000, and in behalf of The Dupont Estate Trust which owns $1,740,000, attacks the plan as earnestly as the Coast Line defends it, both seeming to regard the control by stock ownership of the East Coast railroad as the principal matter involved. The Paper Company contends, among other things, that among its creditor rights in this insolvent corporation is the right to a prorata equitable ownership of the mortgaged property, which expressly includes the franchise granted to the incorporators by the State of Florida to run a railroad between Jacksonville and Miami in that State; and that the proposed plan takes this property without due process of law, and in so far as it rests on public interest takes it for public purposes without just compensation, contrary to the provisions of the Fifth Amendment. It contends, also that Section 77 properly construed does not authorize a plan of reorganization by a forced merger, and that if it does, this particular plan is not fair and equitable and does not give due effect to its creditor rights. It insists that all these contentions are fully open for this court to decide.

The remaining refunding bondholders object strongly in several groups. One group, owning a par value of about $5,000,000, reside in and around Miami. One of them owning over three millions of bonds testifies that he bought most of his bonds after the certification by the Commission of its first plans providing for common stock ownership by the bondholders and on the faith of them; that he and his associates desire to be stockholders and to help run

the railroad; that they do not wish any investment in the Coast Line, and do not regard it as the equal of the East Coast, and do not like its capital set-up; and that they will vote against the acceptance of this plan if submitted to a vote. Their counsel attacks the plan on grounds similar to those above indicated as to the Paper Company.

Another group residing at Tampa and owning above $1,000,000 of the bonds take the same position and their representative testifies they will certainly vote to reject the plan if submitted to a vote.

What is known as the Lynch interest represents over $3,000,000 of bonds, and though it introduced the Coast Line to the Commission it is strongly opposed to this plan, and will vote against it. It is not so much concerned about control as it is about the unfairness of the result, but it urges also objections similar to those of the Paper Company.

In behalf of the remaining refunding bondholders, who are unorganized, the trustee in the bond mortgage opposes approval of the plan, but does not undertake to say how these bondholders will vote.

The defenders of the plan contend that the court has to decide only questions of law, fact questions being settled by the Commission. The objectors contend that the court's function is to pass independently on the matters the statute submits to it, whether involving law or fact, not being bound by the conclusions reached by the Commission in the exercise of its functions. Neither view is altogether correct. I think the statutory provisions are to be followed as written, Commission and court each acting in the sphere assigned. By Section 77(d) the Commission has the duty to formulate and approve a plan of reorganization which may be different from any which has been proposed by parties in interest, which "will in its opinion meet with the requirements of Subsections (b) and (e) of this Section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve

any plan", stating fully the reasons for its conclusions. This is the only way in which a plan can come to the court, and the court cannot alter it. Subsection (e) states the function of the court, requiring notice to be given "all parties in interest" of a time to file their objections in writing to the plan and their claims for equitable treatment. If such objections and claims are filed the judge shall hear them and approve the plan "if satisfied that it complies with Subsection (b), is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders and does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders"; besides other matters not here important. "If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action", transmitting to it a copy of any evidence he received. If he approves, the plan goes back to the Commission for submission to the proper classes affected for their acceptance or rejection; the result of the vote is certified to the judge, and if two-thirds in amount of each class affected accept it, the judge shall confirm the plan; but if not so accepted the judge may after another hearing confirm it anyhow, if satisfied that it gives a fair and equitable equivalent of the interests of those rejecting it and that the rejection is not reasonably justified, and that the plan does not conform to the requirements for its previous approval by the court. Neither in the hearing for approval, nor in that for confirmation notwithstanding rejection, is the judge required to consider compatibility with the public interest; though the Commission is so

required. At the end of Subsection (e) it is provided that if it shall be necessary to determine the value of any property for any purpose the Commission shall determine the value and certify it to the court, observing certain standards as to the property used in railroad operation. I conclude that the matter of compatibility with the public interest of a plan is left to the opinion of the Commission and is not to be reviewed by the judge. Also that certifications of value by the Commission are in general final if the legal standards have been observed. Both are within the peculiar expertness of the Commission. An exception may exist if the judge is investigating a question of Constitutional right which transcends the statute, for such are always judicial rather than administrative questions. And on the matters about which the statute says the judge must be satisfied in order to approve a plan or confirm it over rejection, he has the right to make his independent investigation and is not bound by the conclusions of the Commission thereon. That the judge is not restricted to the facts certified by the Commission but may take additional evidence, is shown by the requirement that if the matter is sent back to the Commission a copy of the additional evidence shall be sent to the Commission. What is fair and equitable and what gives due recognition to the rights of each class of creditors and stockholders, and what is the law of the land, are matters of a judicial nature and within the peculiar expertness of the courts. On them the judge has the last word. While reorganization is the object of Section 77, it is safeguarded by the requirement of approval of the plan by both Commission and judge, and if that cannot be secured the statute itself requires that the proceeding be dismissed and the debtor and his estate be remitted to a previous receivership, if any. So in this hearing, such additional testimony has been taken. I have no function to review the matter of compatibility with the

public interest of the plan; or the valuation of the property involved unless on the question of unconstitutional taking of it; but I should independently consider those matters which the statute requires me to be satisfied about, in the light of the new evidence concerning them.

Turning next to some vital questions of law which have been pressed, I do not think it matters whether the Coast Line as an unsecured creditor (which class, along with the stockholders, has been found to have no interest) had a right to present a plan. The Commission took note of it, modified it substantially and adopted it. The Commission had the right to propose a plan not presented by any party in interest. This plan comes to the court as the plan or proposal of the Commission.

It is very earnestly argued that Subsection (b) which gives the specifications for a plan, in saying it "may include the transfer or control of all or any part of the property of the debtor to another corporation or corporations, the *merger or consolidation* of the debtor with another corporation, etc.," does not mean a forced merger, which the Interstate Commerce Act has never permitted the Commission to compel, though Congress has often considered the matter. The history of the legislation in adopting Section 77 in 1933, is pointed to as showing that Congress was then concerned that no such thing was to be done under Section 77; and so again in 1935 when the section was revised; and that the reference to the Interstate Commerce Act in Subsection (f) which the Commission thinks applies only to its actions after confirmation of a plan, was intended to apply throughout and became accidentally misplaced in redrafting the Act. Without reciting the history, I think this contention is true. Of late years courts have perhaps gone too far in using legislative history in a very loose way to supplement or change an Act as written. If this question related directly to the liberties or property of the people I would be loath to do it now. But it relates to the extent

of the power granted by Congress to its own agent. And the Interstate Commerce Act can be construed with Section 77 to ascertain what Congress really meant by a railroad "merger or consolidation", and whether it meant one consented to by both parties to it. No one would contend that the Coast Line could be forced. But the Commission argues that this debtor has also consented, because its stockholders have not appeared to object. I think that does not follow. It is expressly found that the debtor's insolvency is such that the stockholders are not interested parties. The debtor, its property and affairs now belong in equity to the creditors, and more specifically to the refunding bondholders. The full jurisdiction and control over them is in this court. The refunding bondholders by an overwhelming majority do not consent. If the court has the power as a court of bankruptcy to consent for them, under the circumstances of this case it should refuse to do so. I do not think Congress intended to force a merger undesired by the majority in amount of the affected parties by *permitting* a merger to be part of a plan. This conclusion makes it unnecessary to determine whether the court's power in bankruptcy could be extended to force a merger consistently with the Fifth Amendment. It also ends this plan. But I am assured in argument that the decision if made either way will be appealed, so it will be useful to decide the merits of the plan, if it is hereafter held that a forced merger is lawful.

I conclude also to disapprove the plan if lawful, because it is testified under oath and is plainly apparent that it will be rejected almost unanimously by the refunding bondholders. Only $572,400 of bonds out of $45,000,000, about 1.3 per cent, say by their committee that they will probably accept. Unless on a vote 66⅔ percent accept, I would not be bound to confirm the plan, and I would not confirm it notwithstanding its rejection because I think the objectors are reasonably justified in objecting and not mere

obstructors. Ordinarily this conclusion would be premature because the vote has not been taken and objectors might change their minds or sell out. But the atmosphere of this trial and the feeling manifested satisfy me absolutely that there will be no material change. It is perfectly futile to waste time and effort to go further with the matter.

I conclude also that the plan is not fair and equitable and does not afford due recognition to the rights of the refunding bondholders. These bondholders originally had a general mortgage covering railroad property, franchise, and income, with a right to a receivership on default to collect the income, and to a decree of foreclosure and a judicial sale; and the right to bid for and buy the property if they wished and made the highest and best bid. They got the receivership, and it was extraordinarily successful, not only maintaining the railroad in operation and carrying the first mortgage without default, but accumulating so much cash not needed for railroad purposes as to enable a third of the first mortgage bonds, $4,000,000, to be bought in, and four coupons of the refunding bonds to be paid, $4,500,000. Diesel engines have been bought, and new cars, an unprofitable extension of the road eliminated at an outlay of about $1,000,000, and the mainline shortened by a money saving cutoff at an outlay of about $1,000,000; and a program of relaying the tracks with new and heavier rail has been two-thirds carried out and enough money set aside to finish the outlay, being over $5,000,000; and there is enough cash on hand now to pay off the remaining $8,000,000 of first mortgage bonds, as the present plan proposes. This railroad property is in equity the property of the refunding bondholders who replace practically the stockholders as owners. On a reorganization they would naturally receive the common stock prorata. All the plans approved by the Commission save the present one so provided. With that set-up it would not much matter what reorganization value and total capitalization was fixed; for

the common stockholders would get the surplus earnings. Most of the bondholders wish to continue to own and run the railroad. Many of them bought bonds during this proceeding with that purpose, as they had a right to do. The Commission indicates that the fact that they bought below par affects in equity their standing. That is incorrect. Each took all the rights of his vendor, so that original purchasers of bonds at par and subsequent purchasers below par, and even those who may have had bonds given them, stand alike. The debtor got the same money for each bond and owes the full amount on each. This was determined in a railroad reorganization in *Georgia, Florida and Alabama R. R. Co.* vs. *Bankers Trust Co.*, ... Fed. (2) ....., recently decided by the Court of Appeals of this Circuit, where certain purchasers of bonds paid less than par and paid nothing for defaulted coupons, but were allowed to prove the full principal and coupon interest. But the Commission, within its province, though by a bare majority, has held that the public interest prevents St. Joe Paper Company from holding a majority of common stock, and therefore proposes that no bondholder can have the common stock he desires and expected, but all must sell their equitable rights in this property, and must take in exchange that which is not money and which they do not desire to have. This seems to me to be unfair, inequitable, and not a due recognition of their rights. Assuming that a forced merger is within the provisions of Section 77 and within constitutional bankruptcy power, it ought to be a last resort. There is no necessity for it here, for all that hinders a reorganization by a less drastic plan is that St. Joe Paper Company has bought too many bonds and become entitled to too much common stock under the former plan. A voting trust to prevent its exercise of majority stock control was adopted by the Commission in one plan. There might be devised a plan under which some of this stock should be deprived of voting power or awarded to other stockholders who in the

Commission's opinion could properly hold it consistently with public interest, compensating St. Joe Paper Company with other values. I do not see that any situation is here presented which can be said to make this plan the only possible one, if that could render it fair and equitable.

This case is not as though the merging corporations were affiliates, and members of the same corporate family already. In such a case there is really a mere simplification of corporate organization of interests already related. The Coast Line, through an unsecured creditor, is really a stranger in interest, having been found to have no interest in the railroad property to be reorganized.

Yet further, while deferring to the finding that the valuation of the railroad property as fixed by the Commission is equalled by that of the Coast Line securities, I am impressed that evidence produced before me, if it had been before the Commission, might have produced a different result. The materials for some of it already existed, but were not assembled for or considered by the Commission, and some relate to occurrences since it made its finding. I am only confused by the accountants' comparisons in terms of dollars after "adjustments" more or less plausible by which they have reached contrary conclusions; but I am impressed by undisputed facts of tonnage hauled, population increases, and other progressive improvements each year up to this one, showing that the territory of the East Coast is going steadily forward at a faster pace than the general territory served by the Coast Line; that by the testimony of the Coast Line high officials its railroads have for the past three years had deficits in operating revenues, so that the system has been dependent on non-operating revenues, while the East Coast has consistently continued to net more than the $1,500,000 the Commission has fixed as its normal rate. This gives these bondholders, regardless of intricate bookkeeping, a right to feel that they have a better railroad than the average of the Coast Line. The

very aggressiveness of the Coast Line in proposing and defending this plan indicates that the Coast Line thinks it is getting a bargain; that what it gets is not the mere equivalent of what it pays, but much more. There seems, too, to be a fault in the Commission's finding of equivalency. The Commission recognized the necessity of participation as common stockholders in the merger entitling these bondholders in good years to a chance to recoup their losses by increased dividends. They considered that one and a third shares of common stock per bond was inadequate participation and modified the Coast Line plan by making the two shares of preferred stock to be participating as to dividends and to carry voting powers, and so equivalent to common stock. But it was overlooked that the plan makes the preferred stock callable at par at any time, on thirty days notice, so that if good years were really making it pay, it could be called and the dividends kept by the System, these new stockholders being left with only one and a third shares of voting and high earning stock instead of the three and a third shares the plan is supposed to give them. I have no right to make new valuations, but these considerations further move me to disapprove the plan as not fair and equitable.

For all these reasons the plan of reorganization now under consideration is disapproved and rejected by the court. If the Commission continues to think that St. Joe Paper Company cannot compatibly with the public interest be made the holder of the majority of the voting stock in an internal reorganization of the debtor, some plan may still be devised by it to relieve this difficulty, as by using a voting trust, or providing for a part of the Paper Company's common stock to have no voting right so long as it is owned by the Paper Company and would give it voting control. This, while limiting somewhat the creditor rights of the Paper Company, is necessitated by its own act in overbuying refunding bonds, and might be more equitable

than to defeat the similar rights of others who have done nothing amiss. I therefore overrule the pending motions to dismiss the proceedings and grant those which ask that the proceedings be referred back to the Commission for further effort to make a proper plan.

As to the allowance of expenses and compensation for services from Feb. 15, 1945, through May 15, 1948, in preparing a plan, I will defer action until the Commission presents another plan or reports that none can be made. In view of the very thorough and repeated consideration given this debtor's affairs already, this should not take long. The Commission has not yet fixed maximum limits for all the claims, and during the period named it seems to me that the efforts put forth were not altogether in aid of formulating a fair and equitable plan of reorganization, but to some extent were a partisan struggle for control which ought to be paid for by clients rather by the debtor's estate. Of that the Commission can judge better than I. I refer back to the Commission for reconsideration and completion the fixing of these maximum limits, and to cover the further efforts to aid the Commission to achieve a plan.

Let the Commission be forthwith furnished with a copy of this opinion and order and of the evidence taken before me in this hearing.

This January 22, 1949.

SAML. H. SIBLEY.
U. S. Judge Designate.

Notice of Appeal of Atlantic Coast Line Railroad.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER of FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

NOTICE IS HEREBY GIVEN that Atlantic Coast Line Railroad Company hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, and from every part of said order.

Dated, Jacksonville, Florida, February 21, 1949.

McCARTHY, LANE & HOWELL,
Atlantic National Bank Building,
Jacksonville, Florida.
By CHARLES C. HOWELL, JR.,
A Partner.

CHARLES COOK HOWELL,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

ALEXANDER & GREEN,
120 Broadway,
New York, N. Y.
By EDWARD W. BOURNE,
A Partner.
Attorneys for Atlantic Coast Line
Railroad Company.

Notice of Appeal of Deposit Committee.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER of FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

NOTICE IS HEREBY GIVEN that Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a deposit committee for First and Refunding 5% Bonds of Florida East Coast Railway Company Due 1974, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the plan of reorganization of the debtor and referring the proceedings back to the Interstate Commerce Commission for further order, and from every part of said order.

Dated, Jacksonville, Florida, February 21, 1949.

STOCKTON, ULMER & MURCHISON,
Barnett National Bank Building,
Jacksonville 2, Florida.
By /s/ HERMAN ULMER,
A Partner.

DAVIS POLK WARDWELL SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, New York.
By /s/ EDGAR G. CROSSMAN,
A Partner.

Attorneys for Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden.

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER

of

FLORIDA EAST COAST RAILWAY COMPANY,

No. 4827-J.

To the Clerk of the above-named Court:

You are hereby requested, pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, to include in the record on the appeal of the above-named appellant to the United States Court of Appeals for the Fifth Circuit from the Order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action the following portions of the record, proceedings and evidence herein:

1. The papers covered by certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Equitable Life Assurance Society of the United States, et al., and order of the Commission entered March 1, 1941;

Petition of Jesse Ball Dupont, et al., as Trustees, and order of the Commission entered March 8, 1941;

Petition of Bankers Trust Company, et al., as Trustees, and order of the Commission entered March 5, 1941;

Petition of Guaranty Trust Company of New York, et al., as Successor Trustees, filed March 17, 1941;

Petition of Fred G. Hamilton, filed March 17, 1941;

Petition of Independent Protective Committee of Florida East Coast Railway Company First Mortgage Bonds, filed March 17, 1941;

Petition of The New York Trust Company, as Successor Trustee, filed March 18, 1941;

Petition of S. A. Lynch, filed April 21, 1941;

Petition of Greater Miami Traffic Association, filed April 22, 1941;

Order of the Commission entered February 24, 1941, and accompanying notice;

Petition of Scott M. Loftin, filed March 10, 1941;

Petition of Edward W. Lane, filed March 10, 1941;

Statement supplementing petition of Edward W. Lane, filed March 17, 1941;

Objections of Fred G. Hamilton, filed March 17, 1941;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Order of the Commission entered April 8, 1941;

Objections of Fred G. Hamilton, filed April 21, 1941;

Order of the Commission entered April 19, 1941, and accompanying report;

Appeal of Brotherhood of Locomotive Firemen and Enginemen from Ruling of Examiner Denying Leave to Intervene, filed April 30, 1941;

Reply of Trustees of The Estate of Alfred I. Dupont, filed May 10, 1941;

Order of the Commission entered May 31, 1941;

Certificate of the Commission entered June 2, 1941;

Order of the Commission entered June 7, 1941;

Report proposed by Ralph H. Jewell, Examiner, filed August 4, 1941;

Exceptions of Greater Miami Traffic Association, filed September 17, 1941:

Exceptions of Guaranty Trust Company of New York, *et al.*, Successor Trustees, filed September 20, 1941;

Exceptions of Estate of Alfred I duPont, filed September 20, 1941;

Exceptions of Independent Protective Committee, filed September 22, 1941;

Exceptions of Institutional Group of First Mortgage Bondholders, filed September 22, 1941;

Exceptions of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed September 22, 1941;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Exceptions of Fred G. Hamilton, filed September 22, 1941;

Exceptions of Greater Miami Traffic Association, filed September 22, 1941;

Exceptions of Bankers Trust Company, et al., as Trustees, filed September 22, 1941;

Reply of Fred G. Hamilton, filed October 2, 1941;

Reply of Fred G. Hamilton, filed October 2, 1941;

Transcript of the stenographer's notes of the oral argument heard October 24, 1941, at Washington, D. C.;

Report and order of the Commission, filed and entered April 6, 1942;

Petition of John W. Martin, filed April 20, 1942;

Order of the Commission entered May 6, 1942;

Order of the Commission entered May 28, 1942;

Petition of Guaranty Trust Company of New York, Successor Trustee, filed June 4, 1942;

Petition of Trustees of the Estate of Alfred I. Du Pont, filed June 5, 1942;

Petition of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed June 5, 1942;

Reply of Guaranty Trust Company of New York, Successor Trustee, filed June 15, 1942;

Reply of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed June 15, 1942;

Petition of Independent Protective Committee filed July 18, 1942;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Trustees of Estate of Alfred I. duPont, filed July 20, 1942;

Memorandum of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 30, 1942;

Order of the Commission entered August 10, 1942; and

Report and Order of the Commission, filed and entered August 10, 1942,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

2. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of transcript of the stenographer's notes of the hearing held March 17, 18, 19, 28 and 31, and April 21 and 22, 1941, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the original of which is now on file and of record in the office of said Commission."

3. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of Exhibits No. 1 to 65, both inclusive, filed at the hearing held March 17, 18, 19, 28

and 31, and April 21 and 22, 1941, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

4. The papers covered by a certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Petition of Frank D. Newman for leave to intervene, and order of the Commission entered February 7, 1944;

Petition of United States Trust Company of New York for leave to intervene, and order of the Commission entered March 14, 1944;

Petition of St. Joe Paper Company for leave to intervene, and order of the Commission entered April 22, 1944;

Petitions of E. N. Claughton, Fred K. Conn and Associates, Edward Ball, Safe Deposit & Trust Co., Ogden T. Davis, Royal Palm Inv., Inc., and Bancroft T. Foley for leave to intervene, filed at the hearing held May 3, 1944;

Petition of Atlantic Coast Line Railroad Company for leave to intervene, and order of the Commission entered November 30, 1944;

Petition of Lorenzo C. Dilks for leave to intervene, and order of the Commission entered March 17, 1945;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Railway Labor Executives' Association for leave to intervene, and order of the Commission entered May 28, 1945;

Petition of Southern Railway Company, *et al.*, for leave to intervene, and order of the Commission, entered August 1, 1945;

Petition of St. Johns County, Florida, *et al.* for leave to intervene, and order of the Commission entered October 22, 1945;

Petition of St. Lucie County, Florida, *et al.* for leave to intervene, filed at hearing held November 13, 1945;

Petition of City of New Smyrna Beach, Florida, *et al.* for leave to intervene, filed at hearing beginning November 6, 1945;

Petition of Alleghany Corporation for leave to intervene, filed at hearing held November 6, 1945;

Petition of the City of Fort Pierce, *et al.*, for leave to intervene, filed at hearing held November 28, 1945;

Petition of Miami Chamber of Commerce for leave to intervene, filed at hearing held November 28, 1945;

Petition of Brotherhood of Railroad Trainmen for leave to intervene, filed at hearing held November 23, 1945;

Petition of Jacksonville Chamber of Commerce, *et al.*, for leave to intervene, filed at hearing held November 13, 1945; and

Petition of Seaboard Air Line Railroad Company for leave to intervene, and order of the Commission entered September 23, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

5. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Plan of reorganization filed May 3, 1944;

Plan of reorganization filed November 6, 1945;

Order of the Commission entered November 6, 1943, and accompanying notice;

Proof of publication;

Order of the Commission entered November 29, 1943, and accompanying notice;

Order of the Commission entered December 31, 1943; and accompanying notice;

Order of the Commission entered February 16, 1944, and accompanying notice;

Petition of United States Trust Company of New York, as Trustee, filed March 15, 1944;

Petition of Frank D. Newman filed April 20, 1944;

Proposal of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed April 22, 1944;

Petition of St. Joe Paper Company, filed April 22, 1944;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Answer and Objections of Bankers Trust Company, *et al.*, filed April 27, 1944;

Suggestions of Fred G. Hamilton, *et al.*, filed May 3, 1944;

Brief of Independent Protective Committee of First Mortgage Bonds, filed July 7, 1944;

Brief of Institutional Group of First Mortgage Bondholders, filed July 12, 1944;

Brief and argument of Fred G. Hamilton, filed July 14, 1944;

Brief of St. Joe Paper Company, filed July 15, 1944;

Brief of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 15, 1944;

Joint Brief of Joseph van B. Wittman, *et al.*, filed July 15, 1944;

Brief of Guaranty Trust Company of New York, *et al.*, filed July 15, 1944;

Brief of United States Trust Company of New York, filed July 15, 1944;

Brief of Frank D. Newman, filed July 20, 1944;

Petition of S. A. Lynch, *et al.*, filed November 8, 1944;

Reply of St. Joe Paper Company to Petition of S. A. Lynch, *et al.*, filed November 17, 1944;

Notice of the Commission dated November 29, 1944;

Brief of Independent Protective Committee, filed December 6, 1944;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Brief of Fred G. Hamilton, filed December 7, 1944;

Brief of St. Joe Paper Company, filed December 7, 1944;

Brief of S. A. Lynch, *et al.*, filed December 8, 1944;

Memorandum of Atlantic Coast Line Railroad Company, filed December 8, 1944;

Summary, report and order of the Commission, filed and entered January 8, 1945;

Petition of Lorenzo C. Dilks, filed March 5, 1945;

Petition of St. Joe Paper Company, filed March 8, 1945;

Petition of Frank B. Newman, filed March 8, 1945;

Petition of S. A. Lynch, *et al.*, filed March 9, 1945;

Petition of Deposit Committee for the First and Refunding Mortgage 5% Bonds, filed March 9, 1945;

Petition of Safe Deposit and Trust Company of Baltimore, filed March 9, 1945;

Reply of S. A. Lynch, *et al.*, filed March 19, 1945;

Reply of St. Joe Paper Company, filed March 19, 1945;

Notice of the Commission dated May 8, 1945;

Transcript of the stenographer's notes of the oral argument heard May 29, 1945, at Washington, D. C.;

Order of the Commission entered July 20, 1945, and accompanying notice;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Atlantic Coast Line Railroad Company, filed July 27, 1945;

Petition of Fred G. Hamilton, filed August 2, 1945;

Order of the Commission entered August 17, 1945, and accompanying notice;

Order of the Commission entered October 25, 1945;

Amendment to petition of Fred G. Hamilton, filed November 5, 1945; and

Proof of publication, filed November 6, 1945,

in Finance Docket No. 13170, Florida East Coast Railway Company reorganization, the originals of which are now on file and of record in the office of said Commission."

6. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held May 3, 1944, at Washington, D. C., and Exhibits No. 66 to 89, both inclusive, filed at said hearing in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

7. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached

are true copies of the transcript of the stenographer's notes of the hearing held November 6, 7, 8 and 9, 1945, at Washington, D. C., and Exhibits No. 90 to 165, both inclusive, filed at said hearing, in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

8. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held November 13, 14, 15, 16, 19, 20 and 21, 1945, at West Palm Beach, Florida, and Exhibits No. 166 to 216, both inclusive, filed at said hearing in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

9. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held November 23, 26 and 27, 1945, at West Palm Beach, Florida, and Exhibits No. 217 to 242, both inclusive, filed at said hearing, in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

10. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Transcript of the stenographer's notes of the hearing held November 28, 29 and 30, 1945, at West Palm Beach, Florida, and Exhibits No. 243 to 266, both inclusive, and 268 to 297, both inclusive, filed at said hearing; and

Exhibits No. 298 to 303, both inclusive, received pursuant to order of the Commission entered June 27, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

11. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Memorandum of Guaranty Trust Company of New York, *et al.*, filed January 22, 1946;

Memorandum of Claude Pepper, Senator, filed February 15, 1946;

Memorandum of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed February 15, 1946;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Brief of Board of County Commissioners of St. Johns County, Florida, filed February 13, 1946;

Brief of St. Joe Paper Company, filed February 14, 1946;

Brief of Greater Miami Chamber of Commerce, *et al.*, filed February 14, 1946;

Brief of Southern Railway Company, *et al.*, filed February 14, 1946;

Brief of Congressman J. Hardin Peterson, filed February 14, 1946;

Brief of The New York Trust Company, as trustee, filed February 15, 1946;

Brief of S. A. Lynch, *et al.*, filed February 15, 1946;

Brief of Atlantic Coast Line Railroad Company, filed February 15, 1946;

Brief of the City of New Smyrna Beach, Florida, filed February 15, 1946;

Brief of City of Fort Pierce, Florida, *et al.*, filed February 15, 1946; and

Brief of Jacksonville Chamber of Commerce, *et al.*, filed February 18, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

12. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition of Atlantic Coast Line Railroad Company, filed May 20, 1946;

Petition of St. Joe Paper Company, filed June 7, 1946;

Answer of Atlantic Coast Line Railroad Company, filed June 19, 1946;

Notice of the Commission dated June 21, 1946, and accompanying summary and third supplemental report proposed by Ralph H. Jewell, Examiner;

Order of the Commission entered June 27, 1946;

Exceptions of Lorenzo C. Dilks, filed August 5, 1946;

Exceptions of F. K. Conn, filed August 19, 1946;

Exceptions of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed August 19, 1946;

Statement of Congressman J. Hardin Peterson, filed August 19, 1946;

Brief of Claude Pepper, Senator, filed August 19, 1946.

Exceptions and brief of the New York Trust Company, as Trustee, filed August 20, 1946;

Exceptions of S. A. Lynch, *et al.*, filed August 20, 1946;

Exceptions of Atlantic Coast Line Railroad Company, filed August 20, 1946;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Reply of E. N. Claughton, filed September 9, 1946;

Reply of S. A. Lynch, *et al.*, filed September 9, 1946;

Reply of Southern Railway Company, *et al.*, to exceptions, filed September 9, 1946;

Reply of Southern Railway Company, *et al.*, to 'Brief of Claude Pepper, Senator from the State of Florida,' and to 'Statement of Congressman J. Hardin Peterson as to the Examiner's Proposed Report,' filed September 9, 1946;

Brief of Board of County Commissioners of St. Johns County, Florida, filed September 9, 1946;

Reply of The Miami Chamber of Commerce, filed September 9, 1946;

Reply of Jacksonville Chamber of Commerce, *et al.*, filed September 9, 1946;

Reply of St. Joe Paper Company, filed September 9, 1946;

Statement of Joe Hendricks, Member of Congress, filed September 9, 1946;

Reply of The Greater Miami Traffic Association, filed September 9, 1946;

Reply of Atlantic Coast Line Railroad Company, filed September 9, 1946;

Reply of Fort Pierce, Florida, *et al.*, filed September 9, 1946;

Reply of the City of New Smyrna Beach, Florida, filed September 9, 1946;

Reply of Railway Labor Executives' Association, filed September 9, 1946;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Seaboard Air Line Railroad Company, filed September 9, 1946;

Objection of Atlantic Coast Line Railroad Company, filed September 16, 1946;

Exceptions of Seaboard Air Line Railroad Company, filed October 9, 1946;

Transcript of the stenographer's notes of the oral argument heard October 9 and 10, 1946, at Washington, D. C.;

Letter dated New York, October 11, 1946, addressed to Interstate Commerce Commission, Washington 25, D. C., signed Francis T. P. Plimpton;

Letter dated New York, October 22, 1946, addressed to Interstate Commerce Commission, Washington 25, D. C., signed Jesse E. Waid; and

Supplemental order of the Commission entered November 12, 1946;

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

13. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Notice of the Commission dated May 20, 1947, and summary and report and order of the Commission, filed and entered April 8, 1947;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Statement of Atlantic Coast Line Railroad Company, filed June 4, 1947;

Petition of St. Joe Paper Company, filed June 6, 1947;

Petition of the City of Fort Pierce, *et al.*, filed June 9, 1947;

Preliminary petition of E. N. Claughton, filed June 9, 1947;

Petition of F. K. Conn, *et al.*, filed June 9, 1947;

Petition of Miami Chamber of Commerce, *et al.*, filed June 9, 1947;

Preliminary petition of Board of County Commissioners of St. Johns County, Florida, filed June 9, 1947;

Petition of Jacksonville Chamber of Commerce, *et al.*, filed June 9, 1947;

Petition of Seaboard Air Line Railroad Company, filed June 9, 1947;

Preliminary petition of City of New Smyrna Beach, Florida, filed June 9, 1947;

Petition of Brotherhood of Railroad Trainmen, filed June 9, 1947;

Petition of Railway Labor Executives' Association, filed June 9, 1947;

Petition of Southern Railway Company, *et al.*, filed June 9, 1947;

Petition of S. A. Lynch, *et al.*, filed June 9, 1947;

Preliminary petition of The New York Trust Company, as Trustee, filed June 10, 1947;

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Argument in support of preliminary petition of City of New Smyrna Beach, filed July 17, 1947;

Supplemental petition of Southern Railway Company, *et al.*, filed July 17, 1947;

Supplement to petition of St. Joe Paper Company, filed July 18, 1947;

Supporting argument of the City of Fort Pierce, Florida, *et al.*, filed July 18, 1947;

Supplement to petition of S. A. Lynch, *et al.*, filed July 21, 1947;

Supplementary petition of The New York Trust Company, as Trustee, filed July 21, 1947;

Supplemental petition of Miami Chamber of Commerce, *et al.*, filed July 21, 1947;

Petition of F. K. Conn, *et al.*, filed July 21, 1947;

Supplement to petition of Board of County Commissioners of St. Johns County, Florida, filed July 21, 1947;

Brief of E. N. Claughton, filed July 21, 1947;

Reply of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 28, 1947;

Reply of Claude Pepper, Senator, filed July 29, 1947;

Reply of Atlantic Coast Line Railroad Company, filed July 29, 1947;

Reply of S. A. Lynch, *et al.*, filed July 29, 1947;

Order of the Commission entered October 7, 1947;

Transcript of the stenographer's notes of the oral argument held January 6, 7 and 8, 1948, at Washington, D. C.; and

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Report and order of the Commission, filed and entered March 25, 1948,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

14. Notice filed by Atlantic Coast Line Railroad Company, dated October 21, 1948, relating to the adoption by Atlantic Coast Line Railroad Company of the Plan of Reorganization, with attachments lettered A to G, inclusive.

15. Order, dated and filed April 29, 1948, fixing the time within which objections to the Plan of Reorganization and claims and fees incident to the reorganization may be filed.

16. Order, dated and filed October 11, 1948, fixing the date for the hearing on the Plan of Reorganization.

17. Report of the Trustees covering proof of the service of the Order of October 11, 1948, fixing the date for the hearing on the Plan of Reorganization, and publication thereof (three pages and verification only; attachments not to be included).

18. Order of the Honorable Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, dated November 17, 1948 and filed November 22, 1948, designating and appointing the Honorable Samuel H. Sibley, United States Circuit Judge for the Fifth Circuit, to hold the District Court of the United States for the Southern District of Florida, in place or in aid of the judges of said District.

19. Objections to the Plan of Reorganization, viz.:

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Objections to the Reports and Orders of the Interstate Commerce Commission dated April 8, 1947, and March 25, 1948, filed by St. Joe Paper Company.

Objections of the Lynch Interests to the Modified Plan of Reorganization Embodied in the Third and Fourth Supplemental Reports of the Commission, and Claims for Equitable Treatment.

Objections of W. G. Welbon *et al.* to so-called Plan of Reorganization.

Motion to Refer Proceedings back to the Interstate Commerce Commission for Plan of Reorganization, and Objections to the Plan Submitted by the Interstate Commerce Commission, filed by F. K. Conn.

Objections of Chemical Bank & Trust Company and Howard B. Smith, as Successor Trustees under the First and Refunding Mortgage of the Debtor, dated September 1, 1924, to the Plan of Reorganization of the Debtor.

Objections of The New York Trust Company, as Trustee of Florida East Coast Railway Equipment Trust Series D, to Plan of Reorganization of the Debtor certified by the Interstate Commerce Commission, and Claims of said Trustee for Equitable Treatment.

Objections of Seaboard Air Line Railroad Company to the Plan of Reorganization of the Debtor.

Objections by Interveners Southern Railway System Lines to Modified Plan of Reorganization of the Debtor, Approved by the Interstate Commerce Commission.

Protest of Railway Labor Executives' Association, Intervenor.

20. Petition for Intervention of F. K. Conn as Party to the Proceedings.

21. Petition to Set Aside and Annul Third Supplemental Order of the Interstate Commerce Commission Filed in this Cause, Filed by F. K. Conn.

22. Petition for Intervention of President and Directors of The Manhattan Company and J. Bryson Aird, as Successor Trustees under Florida East Coast Railway Company First and Refunding Mortgage dated September 1, 1924.

23. Trancript of the hearing on the objections to the Plan of Reorganization, pages 1 to 1049, except as follows:

(a) Omit pages 35-116 and insert the following:

(Here followed argument as to assets claimed to be free of the lien of the Mortgages.)

(b) Omit from page 647, line 15 to page 1035, line 6, and insert:

(Here followed argument on the objections to the Plan.)

(c) Omit page 1037, line 5 (starting with the words "Various briefs") to page 1048, line 11, and insert:

(Here followed further argument on the objections to the Plan.)

24. All exhibits introduced at the hearing on the objections to the Plan of Reorganization, viz.:

Exhibits Nos. 1-22, both inclusive, of Atlantic Coast Line Railroad Company.

Exhibits Nos. 1-6, both inclusive, of Arthur M. Anderson, Harry C. Hagerty, Henry S. Sturgis and D. C.

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Borden, a Deposit Committee for the First and Refunding 5% Bonds of the Florida East Coast Railway Company, due 1974.

Exhibits Nos. 1-7, both inclusive, of St. Joe Paper Company.

Exhibits Nos. 1-33, both inclusive, of the Lynch interests.

25. The following documents filed in these proceedings, the same being designated for convenience by their respective numbers in the printed Court record:

Number	Date of Filing	Description
1	January 25, 1941	Petition.
2	January 25, 1941	Answer of Debtor.
3	January 31, 1941	Order.
69	June 1, 1941	Order Fixing Time for Filing Claims and Classifying Creditors.
144	January 22, 1942	Report of Trustees as to Claims Filed
336	October 19, 1943	Order and Opinion Sustaining Objections to Plan of Reorganization, and Referring Same Back to Interstate Commerce Commission.
506	November 3, 1945	Application of Institutional Group Respecting Purchase by Trustees of First Mortgage Bonds.
507	December 14, 1945	Order Directing Trustees to Purchase First Mortgage Bonds of Debtor.
588	July 17, 1947	Order Respecting General Additions and Betterments for the year 1947.
595	July 25, 1947	Order Approving Financing of New Equipment and Conditional Sale Agreement.

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

	January 6, 1948	Report of Trustees Respecting Proposed Construction of Okeelanta Branch.
	July 29, 1947	Petition of Atlantic Coast Line Railroad Company for Leave to Intervene.
	May 6, 1948	Objections of St. Joe Paper Company to Intervention of Atlantic Coast Line.
5	May 14, 1948	Amendment to Objections of St. Joe Paper Company.
2	May 18, 1948	Order Respecting Additions and Betterments for the Year 1948.
3	May 18, 1948	Order Granting Interventions, and Denying Petitions of First and Refunding Mortgage Trustees to Amend Previous Orders.
4	June 15, 1948	Petition of St. Joe Paper Company for Allowance for Counsel Fees.
3	August 26, 1948	Petition for Prepayment of First Mortgage Bonds.
7	July 30, 1948	Petition of St. Joe Paper Company for Entry of Order Imposing Lien in favor of First and Refunding Mortgage Bondholders.
9	September 27, 1948	Answer of Atlantic Coast Line Railroad Company to Petition of St. Joe Paper Company.
0	September 28, 1948	Report of Trustees Giving Information Requested by St. Joe Paper Company.

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Number	Date of Filing	Description
701	September 23, 1948	Application of Trustees for Authority to purchase 10 Diesel-electric Locomotives.
702	September 27, 1948	Answer of Atlantic Coast Line Railroad Company to Application of Trustees to Purchase Diesel Locomotives.
703	October 6, 1948	Order Authorizing Trustees to Purchase 10 Diesel-electric Locomotives and Directing Method of Financing
704	September 23, 1948	Application of Trustees for Authority to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.
705	October 6, 1948	Order Authorizing Trustees to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.
715	October 26, 1948	Report and Order of Interstate Commerce Commission fixing Maximum Allowances of Compensation and Expenses for Period February 15, 1948 Through May 15, 1948.

26. Transcript of hearing on October 1, 1948, which resulted in the orders of October 6, 1948 (Document No. 703 and Document No. 705) referred to in the preceding paragraph.

27. Opinion and order of the Honorable Samuel H. Sibley, United States Judge Designate, dated January 22, 1949 and filed January 24, 1949, disapproving the Plan of Reorganization and referring the proceedings back to the Interstate Commerce Commission for further action.

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

28. Notice of appeal of Atlantic Coast Line Railroad, filed February 21, 1949, from order filed January 24, 1949, disapproving the Plan of Reorganization and referring the proceedings back to the Interstate Commerce Commission for further action.

29. Order of the Honorable Samuel H. Sibley, United States Judge Designate, dated March 17, 1949, extending the time to file the record on appeal to May 3, 1949, and directing that certain original papers be sent to the Court of Appeals.

30. This Designation.

31. Statement of Points of Atlantic Coast Line Railroad Company.

Dated, Jacksonville, Florida, April 20, 1949.

McCarthy, Lane & Howell,
Atlantic National Bank Building
Jacksonville, Florida.

By Charles C. Howell, Jr.,
A Partner.

Charles Cook Howell,
Atlantic Coast Line Railroad Company
Wilmington, North Carolina.

Alexander & Green,
120 Broadway,
New York, N. Y.

By Edward W. Bourne,
A Partner.

Attorneys for Atlantic Coast Line
Railroad Company.

Statement of Points of Atlantic Coast Line Railroad Company.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

Atlantic Coast Line Railroad Company, having heretofore filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, and from every part of said order, hereby makes the following statement of points upon which it intends to rely upon said appeal:

1. The Court erred in refusing to approve the Plan of Reorganization.

2. The Court should have made the findings with respect to the Plan of Reorganization specified in subsection (e) of Section 77 of the Bankruptcy Act.

Statement of Points of Atlantic Coast Line Railroad Company.

3. The finding of the Commission that the Plan of Reorganization will be compatible with the public interest was made in conformity with the statutory mandates and is supported by material evidence.

4. The Commission's valuation of the property of the Debtor dealt with in the Plan of Reorganization, in terms of cash and securities of Atlantic Coast Line Railroad Company provided for by the Plan of Reorganization, was made in conformity with the statutory mandates and is supported by material evidence.

5. The Court erred in finding that Section 77 of the Bankruptcy Act does not authorize what the Court denominated a "forced merger".

6. The Court erred in disapproving the Plan of Reorganization on the ground that "it is testified under oath and is plainly apparent that it will be rejected almost unanimously by the refunding bondholders".

7. The Court erred in finding that "the plan is not fair and equitable and does not afford due recognition of the rights of the refunding bondholders".

8. In concluding to disapprove the Plan of Reorganization the Court acted, as appears from the Court's opinion, under many misapprehensions relating to the past history of the receivership and reorganization proceedings in the District Court, the proceedings before the Interstate Commerce Commission, the bases for the Commission's approval of the Plan of Reorganization, the positions of the parties and the reasons therefor, the earning power and value of the property of the Debtor, the earning power and value of the property of the Atlantic Coast Line Railroad Company and other matters; many of said misapprehensions

related to matters which were not material to the issues before the Court for decision, but the Court treated said matters, and other immaterial matters as material to such issues.

9. The Court should have approved the Plan of Reorganization.

Dated, Jacksonville, Florida, April 20, 1949.

McCarthy, Lane & Howell,
Atlantic National Bank Building,
Jacksonville, Florida.

By Charles C. Howell, Jr.,
A Partner.

Charles Cook Howell,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

Alexander & Green,
120 Broadway,
New York, N. Y.

By Edward W. Bourne,
A Partner.

Attorneys for Atlantic Coast Line Railroad Company.

Designation of Contents of Record on Appeal by Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a Deposit Committee for First and Refunding Mortgage 5% Bonds of Florida East Coast Railway Company Due 1974.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Clerk of the above-named Court:

You are hereby requested, pursuant to Rules 75(a) and 75(k) of the Federal Rules of Civil Procedure, to include in the Record on Appeal of the above-named Appellants to the United States Court of Appeals for the Fifth Circuit from the Order filed herein on January 24, 1949, disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action the following portions of the record, proceedings and evidence herein:

1. All those portions of the record, proceedings and evidence designated by Appellant, Atlantic Coast Line Railroad Company in its "Designation of Contents of Record on Appeal" dated April 20, 1949.

Designation of Contents of Record by Deposit Committee.

2. Notice of Appeal of Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a deposit committee for First and Refunding Mortgage 5% Bonds, dated February 21, 1949, from order filed January 24, 1949 disapproving the Plan of Reorganization and referring the proceedings back to the Interstate Commerce Commission for further action.

3. This Designation.

4. Statement of Points of Deposit Committee for First and Refunding Mortgage 5% Bonds.

Dated, Jacksonville, Florida, April 28, 1949.

STOCKTON, ULMER & MURCHISON,
Barnett National Bank Building,
Jacksonville, Florida.

By (s) HERMAN ULMER,
A Partner.

DAVIS POLK WARDWELL SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, New York.

By (s) EDGAR G. CROSSMAN,
A Partner.

Attorneys for Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden.

Statement of Points of Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a Deposit Committee for First and Refunding Mortgage 5% Bonds of Florida East Coast Railway Company Due 1974.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

The Appellants, having heretofore filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, and from every part of said order, hereby make the following statement of points upon which they intend to rely upon said appeal:

1. The Court erred in refusing to approve the Plan of Reorganization.

2. The Court should have made the findings with respect to the Plan of Reorganization specified in subsection (e) of Section 77 of the Bankruptcy Act.

3. The finding of the Commission that the Plan of Reorganization will be compatible with the public interest was made in conformity with the statutory mandates and is supported by material evidence.

4. The Commission's valuation of the property of the Debtor dealt with in the Plan of Reorganization, in terms of cash and securities of Atlantic Coast Line Railroad Company provided for by the Plan of Reorganization, was made in conformity with the statutory mandates and is supported by material evidence.

5. The Court erred in finding that Section 77 of the Bankruptcy Act does not authorize what the Court denominated a "forced merger".

6. The Court erred in disapproving the Plan of Reorganization on the ground that "it is testified under oath and is plainly apparent that it will be rejected almost unanimously by the refunding bondholders".

7. The Court erred in finding that "the plan is not fair and equitable and does not afford due recognition of the rights of the refunding bondholders".

8. In concluding to disapprove the Plan of Reorganization the Court acted, as appears from the Court's opinion, under many misapprehensions relating to the past history of the receivership and reorganization proceedings in the District Court, the proceedings before the Interstate Commerce Commission, the bases for the Commission's approval of the Plan of Reorganization, the positions of the parties and the reasons therefor, the earning power and value of the property of the Debtor, the earning power and value of the property of the Atlantic Coast Line Railroad Company and other matters; many of said misapprehensions related to matters which were not material to the issues

before the Court for decision, but the Court treated said matters, and other immaterial matters, as material to such issues.

9. The Court should have approved the Plan of Reorganization.

Dated, Jacksonville, Florida, April 28, 1949.

STOCKTON, ULMER & MURCHISON,
Barnett National Bank Building,
Jacksonville, Florida.

By (s) HERMAN ULMER,
A Partner.

DAVIS POLK WARDWELL SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, New York.

By (s) EDGAR G. CROSSMAN,
A Partner.

Attorneys for Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden.

Request of Atlantic Coast Line Railroad Company that specified portions of the record on appeal be printed prior to its transmission to the Court of Appeals.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER of FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Clerk of the above-named Court:

You are hereby requested, pursuant to paragraph 10 of Rule 23 of the Rules of the United States Court of Appeals for the Fifth Circuit, to cause the following specified portions of the record on the appeal from the Order filed herein on January 24, 1949, disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, to be printed or photo-lithographed prior to its transmission to said Court, the references herein to the "Designation" being to the "Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company", dated April 20, 1949:

1. Copies of the Reports of the Interstate Commerce Commission dated January 8, 1945, April 8, 1947 and March 25, 1948 and of the Commission's Supplemental Order dated March 25, 1948, as printed in the Reports of the Interstate Commerce Commission, entitled "Florida East Coast Railway Company Reorganization", 261 I. C. C. 151-193, 267 I. C. C. 295-391 and 267 I. C. C. 729-759.

equest of Atlantic Coast Line Railroad Company that specified portions of the record on appeal be printed prior to its transmission to the Court of Appeals.

2. The following items of the Designation: 15, 16, 18, 19 (omitting any notices of service, mailing lists, indices, covers and certificates of service), 20, 21, 22 (omitting verifications), 23, 27, 28, 30 and 31.

3. The following, filed by Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a deposit committee for First and Refunding 5% Bonds of Florida East Coast Railway Company Due 1974: Notice of Appeal to the United States Court of Appeals for the Fifth Circuit from the Order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further order; Designation of Contents of Record and Statement of Points.

4. Copies of the Exhibits enumerated in Item 24 of the Designation.

Dated, Jacksonville, Florida, May 3, 1949.

McCarthy, Lane & Howell,
Atlantic National Bank Building,
Jacksonville, Florida.

By Charles C. Howell, Jr.
A Partner.

Charles Cook Howell,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

Alexander & Green,
120 Broadway,
New York, N. Y.

By Edward W. Bourne,
A Partner.

Attorneys for Atlantic Coast Line Railroad Company.